



FRANCIS ALEXANDER LLC

MAY 27, 2014

THE HONORABLE PAUL S. DIAMOND
United States District Judge
United States District Courthouse
601 Market Street
Philadelphia, PA 19106
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Re: MARINO V. USHER ET AL. | 11-CV-6811
Plaintiff's Response to Defendants' Letter Requesting an Extension of Time to
File for Costs Under 17 U.S.C. § 505

Dear Judge Diamond,

Defendants are requesting that the Court extend the amount of time Defendants have to move for costs and attorney's fees under 17 U.S.C. § 505. Plaintiff has two responses:

First, this ex parte letter is improper, should have been filed as a motion so the parties' positions are placed on the record, and should be disregarded by the Court.

Second, to the extent the Court considers the content of this letter, Defendants' request for an extension to file for 17 U.S.C. § 505 costs should be denied as premature and moot. Federal Rule of Civil Procedure 54(b) is clear that when less than all parties are dismissed from a case, if there is no express determination by the Court that there is no just reason for delay, the action does not end with respect to any of the parties. The Court did not make an express determination with respect to Rule 54(b), thus the action has not ended against the Moving Defendants and litigation costs cannot be recovered. See Goldstein v. GNOC, Corp., 1994 U.S. Dist. LEXIS 11731 (E.D. Pa. 1994) (stating that costs may not be taxed unless a final judgment has been entered).

Respectfully, I am,

Francis Malofiy, Esquire

cc: *To all Counsel and Parties*